

SENATE BILL NO. 29

INTRODUCED BY W. MCNUTT

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CORRECTING INCONSISTENCIES BETWEEN TITLE 41, CHAPTER 3, RELATING TO CHILD ABUSE AND NEGLECT, AND TITLE 41, CHAPTER 5, THE YOUTH COURT ACT, REGARDING JURISDICTION OF THE YOUTH COURT AND DISTRICT COURT; AMENDING SECTIONS 41-3-103, 41-5-103, 41-5-203, 41-5-204, 41-5-321, 41-5-1201, AND 41-5-1801, MCA; AND REPEALING SECTIONS 41-3-1114 AND 41-5-344, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth district court has ~~concurrent~~ jurisdiction ~~with the district court~~ over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

~~(2) Venue is determined pursuant to 41-5-204.~~

(2) The county where a youth is located has initial jurisdiction over a youth alleged to be a youth in need of care. Venue may be transferred to the county of residence of the youth's parent or guardian."

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(10) "Department" means the department of corrections provided for in 2-15-2301.

(11) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512(3) or 41-5-1513(1)(b) or (1)(c) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(12) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(13) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional

1 detention facility.

2 (14) "Family" means the parents, guardians, legal custodians, and siblings or other youth with
3 whom a youth ordinarily lives.

4 (15) "Final disposition" means the implementation of a court order for the disposition or placement
5 of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522
6 through 41-5-1525.

7 (16) "Foster home" means a private residence licensed by the department of public health and
8 human services for placement of a youth.

9 (17) "Guardian" means an adult:

10 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with
11 the youth; and

12 (b) whose status is created and defined by law.

13 (18) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in
14 a semester or absences without prior written approval of a parent or a guardian.

15 (19) "Holdover" means a room, office, building, or other place approved by the board of crime
16 control for the temporary detention and supervision of youth in a physically unrestricting setting for a
17 period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer
18 to an appropriate detention or shelter care facility. The term does not include a jail.

19 (20) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
20 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of
21 adults after arrest but does not include a colocated juvenile detention facility that complies with 28 CFR,
22 part 31.

23 (21) "Judge", when used without further qualification, means the judge of the youth court.

24 (22) "Juvenile home arrest officer" means a court-appointed officer administering or supervising
25 juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

26 (23) "Law enforcement records" means information or data, either in written or electronic form,
27 maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this
28 chapter.

29 (24) (a) "Legal custody" means the legal status created by order of a court of competent
30 jurisdiction that gives a person the right and duty to:

1 (i) have physical custody of the youth;

2 (ii) determine with whom the youth shall live and for what period;

3 (iii) protect, train, and discipline the youth; and

4 (iv) provide the youth with food, shelter, education, and ordinary medical care.

5 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights
6 and duties as guardian unless otherwise authorized by the court entering the order.

7 (25) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or
8 spouse.

9 (26) "Parent" means the natural or adoptive parent but does not include a person whose parental
10 rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless
11 the putative father's paternity is established by an adjudication or by other clear and convincing proof.

12 (27) "Probable cause hearing" means the hearing provided for in 41-5-332.

13 (28) "Regional detention facility" means a youth detention facility established and maintained by
14 two or more counties, as authorized in 41-5-1804.

15 (29) "Restitution" means payments in cash to the victim or with services to the victim or the
16 general community when these payments are made pursuant to a consent adjustment, consent decree,
17 or other youth court order.

18 (30) "Running away from home" means that a youth has been reported to have run away from
19 home without the consent of a parent or guardian or a custodian having legal custody of the youth.

20 (31) "Secure detention facility" means a public or private facility that:

21 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
22 offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid
23 court order; and

24 (b) is designed to physically restrict the movements and activities of youth or other individuals held
25 in lawful custody of the facility.

26 (32) "Serious juvenile offender" means a youth who has committed an offense that would be
27 considered a felony offense if committed by an adult and that is an offense against a person, an offense
28 against property, or an offense involving dangerous drugs.

29 (33) "Shelter care" means the temporary substitute care of youth in physically unrestricting
30 facilities.

(34) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in ~~41-5-344~~ 41-5-347.

(35) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(36) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

(37) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(38) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (38)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(39) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(40) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(41) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(42) "Youth care facility" has the meaning provided in 41-3-1102.

(43) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, or a youth in need of intervention, ~~or a youth in need of care~~ and includes the youth court judge, probation officers, and assessment officers.

(44) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes

1 reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders
2 and decrees, youth assessment materials, predispositional studies, and supervision records of probationers.
3 Youth court records do not include information provided by the youth court to the department of public
4 health and human services' management information system.

5 (45) "Youth detention facility" means a secure detention facility licensed by the department for
6 the temporary substitute care of youth that is:

7 (a) (i) operated, administered, and staffed separately and independently of a jail; or

8 (ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

9 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a
10 sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

11 ~~(46) "Youth in need of care" has the meaning provided for in 41-3-102.~~

12 ~~(47)~~(46) "Youth in need of intervention" means a youth who is adjudicated as a youth and who
13 commits an offense prohibited by law that if committed by an adult would not constitute a criminal
14 offense, including but not limited to a youth who:

15 (a) violates any Montana municipal or state law regarding alcoholic beverages;

16 (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond
17 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of
18 the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to
19 mediate, resolve, or control the youth's behavior; or

20 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its
21 discretion, chooses to regard as a youth in need of intervention."

22
23 **Section 3.** Section 41-5-203, MCA, is amended to read:

24 **"41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in
25 the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the
26 Montana Youth Court Act in which a youth is alleged to be a delinquent youth, or a youth in need of
27 intervention, ~~or a youth in need of care~~ or concerning any person under 21 years of age charged with
28 having violated any law of the state or any ordinance of a city or town other than a traffic or fish and
29 game law prior to having become 18 years of age.

30 (2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all

1 alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

2 (3) The court has jurisdiction to:

3 (a) transfer a youth court case to the district court after notice and hearing; and

4 (b) with respect to extended jurisdiction juvenile cases:

5 (i) designate a proceeding as an extended jurisdiction juvenile prosecution;

6 (ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an
7 extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

8 (iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's
9 majority, subject to the performance of the juvenile portion of the sentence;

10 (iv) continue, modify, or revoke the stay after notice and hearing;

11 (v) after revocation, transfer execution of the stayed sentence to the department;

12 (vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines
13 by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion
14 of an extended jurisdiction sentence; and

15 (vii) transfer a juvenile case to district court after notice and hearing."
16

17 **Section 4.** Section 41-5-204, MCA, is amended to read:

18 **"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have
19 violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. Except as provided
20 in 41-5-206, the youth court shall assume the initial handling of the case.

21 (2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a
22 youth in need of intervention ~~or a youth in need of care~~. The youth court of that county shall assume the
23 initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

24 (a) the county in which the youth is apprehended or found;

25 (b) the county in which the youth is alleged to have violated the law; or

26 (c) the county of residence of the youth's parents or guardian.

27 (3) In the case of a youth alleged to be a youth in need of intervention ~~or a youth in need of care~~,
28 a change of venue may be ordered at any time by the concurrence of the youth court judges of both
29 counties in order to ensure a fair, impartial, and speedy hearing and final disposition of the case.

30 (4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses

1 listed in 41-5-206 and who is to be tried in district court, the charge must be filed and trial held in the
2 district court of the county where the offense occurred."

3

4 **Section 5.** Section 41-5-321, MCA, is amended to read:

5 **"41-5-321. Taking into custody.** (1) A youth may be taken into custody under the following
6 circumstances:

7 (a) by a law enforcement officer pursuant to a lawful order or process of any court;

8 (b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

9 ~~(c) by a law enforcement officer, agent of the department, county attorney, or a person or~~
10 ~~physician treating a youth when there is reason to believe the youth is a youth in need of care, as defined~~
11 ~~in 41-3-102, and that the residence of the youth or the custody by the person legally responsible for the~~
12 ~~youth presents an imminent danger to the life or health of the youth;~~

13 ~~(d)(c)~~ by a juvenile home arrest officer or an officer listed in subsections (1)(a) ~~through (1)(c)~~ AND
14 (1)(B) if a youth placed under a home arrest program has violated a condition of the placement and the
15 home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation
16 officer has provided the juvenile home arrest officer notice of a violation.

17 (2) The taking of a youth into custody is not an arrest except for the purpose of determining the
18 validity of the taking under the constitution of Montana or the United States."

19

20 **Section 6.** Section 41-5-1201, MCA, is amended to read:

21 **"41-5-1201. Preliminary inquiry -- referral of youth in need of care.** (1) Whenever the court
22 receives information from an agency or person, including a parent or guardian of a youth, based upon
23 reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention
24 or that the youth is subject to a court order or consent order and has violated the terms of an order, a
25 probation officer or an assessment officer shall make a preliminary inquiry into the matter.

26 (2) If the probation officer or assessment officer determines that the facts indicate that the youth
27 is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the
28 department of public health and human services."

29

30 **Section 7.** Section 41-5-1801, MCA, is amended to read:

"41-5-1801. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated to be a delinquent youth, OR a youth in need of intervention, ~~or a youth in need of care, as defined in 41-3-102.~~

(3) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner.

(6) A shelter care facility may be operated in conjunction with a youth detention facility.

(7) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities."

NEW SECTION. **Section 8. Repealer.** Sections 41-3-1114 and 41-5-344, MCA, are repealed.

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